

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF VETERANS AFFAIRS

Michael E. Sandford,

Petitioner,

FINDINGS OF FACT,,
CONCLUSIONS AND
RECOMMENDATION

Vs

Clearwater County Memorial Hospital,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:30 a.m. on Tuesday, February 11, 1992, in the Clearwater County Courthouse in Bagley, Minnesota.

The Petitioner, Michael E. Sandford, P.O. Box 451, Bagley, Minnesota 56621, appeared, pro se. Randy Beck, Clearwater County Memorial Hospital Administrator, 203 4th Street N.W., Bagley, Minnesota 56621, appeared on behalf of the County Hospital, Respondent herein. The record on this matter closed on February 27, 1992, the date of receipt of post-hearing submissions.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of Veterans Affairs shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Bernie Melter, Commissioner, Department of Veterans Affairs, 2nd Floor, Veterans Service Building, 20 W. 12th Street, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Petitioner's rights under the Minnesota Veterans Preference Act were violated by the Respondent when Petitioner's status as a full-time employee was changed to part-time.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Michael E. Sandford is a forty-one year-old male who served in the United States Army from May of 1968 through September of 1971. Mr. Sandford did a tour of duty in Vietnam and received an honorable discharge.

2. In April of 1990, the Clearwater County Memorial Hospital was licensed to provide ambulance service for Clearwater County. On April 13, 1990, Michael Sandford was hired by the County Hospital as a "casual" part-time Emergency Medical Technician (EMT) at the rate of \$5.50 per hour. Petitioner's Job was to work on ambulance runs as part of the ambulance staffing.

3. On September 16, 1990, Mr. Sandford was hired as a full-time EMT by the hospital at a salary of \$1,100.00 per month. Petitioner was required to be on call and available for ambulance runs a certain number of hours per month. After the full-time employment began, hospital management began to notice a pattern of abusive language exhibited by Mr. Sandford and a deterioration in Petitioner's relationship with fellow EMTs.

4. During the relevant time period herein, Petitioner was chemically dependent, alcohol being his drug of choice, and he suffered from a post traumatic stress disorder (PTSD) resulting from his experience in Vietnam.

5. on December 16, 1990, Petitioner was involved in an off-duty incident in which he had become intoxicated and assaulted three people. Several months later, Mr. Sandford was convicted of assault and Clearwater County District Court sentenced him to ninety days in jail or a prescribed program of community service.

6. In early 1991, Mr. Sandford got into an argument with the EMT Supervisor, Chris Erwin, in which he "lost control" and "blew up" at her. Petitioner thought he might be discharged as a result of this incident. However, in early February, 1991, Mr. Sandford was given a thirty-day suspension without pay.

7. on March 6, 1991, Mr. Sandford returned from the thirty-day suspension and was told by the Hospital Administrator, Randy Beck, that his employment status would be changed to a one-half time EMT. Petitioner received no veterans preference hearing notice concerning the change in his employment status. Rather, Mr. Sandford was required to sign an agreement with the hospital before he could return to work as a one-half time employee. That agreement reads as follows:

Agreement between Clearwater County Memorial Hospital and Mike Sandford, EMT. Effective March 6th, 1991 Mike Sandford comes off 30 days suspension and goes to half time employment from his current full time employment prior to his suspension. Due to the condition of the suspension also require Mr. Sandford to attend chemical counseling and working part of the month of February the hospital will pay for the single health insurance premium for February. Mr. Sandford will be required to pay half a premium for March and April and there after. This half

time employment will be reviewed within 60 days and the review will also be contingent on the outcome of a court appearance that Mr. Sandford has to make on a personal incident

CONDITIONS OF CONTINUED EMPLOYMENT

- A. Mr. Sandford will agree to pay 112 of the health insurance premium or discontinue the health insurance. He will pay this premium for March and April prior to receiving his next pay check.
- B. Mr. Sandford agrees to attend all counseling sessions established with Mert Scripture and the Mental Health Department. If there is a case where he has to miss a session he needs written approval from myself.
- C. Mr. Sandford will remain alcohol and chemical free at all times.
- D. Mr. Sandford will not use abusive or dirty language in public, when he is on or off duty.
- E. Mr. Sandford will not bad mouth the EMT staff and the hospital to the general public.

If any of these conditions are broken, either by confirmation or suspicion, Mr. Sandford will be terminated immediately. Mr. Sandford agrees to these conditions by signing and dating this agreement. After one year of employment, if Mr. Sandford meets these agreements this will be taken out of his file.

Mr. Sandford signed this agreement and became a part-time employee effective March 6, 1991.

8. Mr. Sandford earned \$411.98 in March of 1991, \$461.60 in April of 1991, and \$368.36 in May of 1991.

9. When Mr. Sandford was initially hired by the County Hospital, he had a slight disability due to a knee injury and had a limp. In late April, 1991, Mr. Sandford took a leave from the County Hospital in order to have surgery on his knee. After the surgery was completed, Petitioner requested an additional leave of absence for the purpose of in-patient treatment for chemical dependency and psychological problems. This leave continued through the end of July.

10. In August, 1991, Mr. Sandford returned to the County Hospital to go back to work. Mr. Beck would not, however, give Petitioner his job back because there had been no release from a doctor stating that Mr. Sandford was

physically able to return to his duties as an EMT. Mr. Sandford returned to a

V.A. hospital for two weeks of treatment in early September, 1991, due, in large part, to his distress at not being able to return to employment at the

County Hospital.

II. On September 26, 1991 , Dr. Thomas E. Miller, an Orthopedic Surgeon, sent a letter to the County Hospital informing Chris Erwin that Michael Sandford was "employable in his capacity as a paramedic". The hospital refused to return Petitioner to his position as an EMT, however.

12. Mr. Sandford returned to the V.A. Hospital in St. Cloud for thirty days of chemical dependency treatment and psychological therapy from mid-October, 1991 through mid-November, 1991. After his release from the V.A. Hospital, Petitioner was prescribed anti-depressant medication which he currently takes. At that time, Mr. Sandford was diagnosed as having post-traumatic stress disorder. In December of 1991, Mr. Sandford worked the first two days of the month for the County Hospital.

13. On December 2, 1992, Mr. Beck informed Mr. Sandford that he (Peticioner) would have to sign a new agreement with the hospital in order for him to continue to work on a part-time basis. This new agreement reads as follows:

This agreement will cover the rehire of Mike Sanford. This agreement will be in effect until Mike Sandford leaves the employment of Clearwater County Memorial Hospital. The conditions of Mike Sandford's rehire are as follows:

- A. Employment will be at .5 FTE until an opening occurs or expansion of services.
- B. Mike will refrain from use of alcohol and drugs on and off duty. Any violation of this will result in termination.
- C. Mike will follow all the policies and procedures of the hospital and the ambulance service.
- D. Mike will work only day shift with only the other employed EMTs or the EMT director. This will be evaluated in 3 months then monthly after than. If there is going to be a change from this, it will require a memo in Mike's file from the hospital administrator.
- E. Mike agrees that he is physically able to perform tasks as described in his job description.
- F. Mike agrees that any violation of hospital and ambulance policies or ethic code will result in automatic termination during the probationary period which will be six (6) months from current rehire start date.

- G. Mike agrees that any problem involving Mike with the law that requires action by law enforcement towards Mike will result in automatic termination.

Petitioner refused to sign this agreement, in part, because it referred to a "rehire" which he thought was inappropriate. Consequently, Petitioner was not allowed to continue working for the Hospital.

14. In addition to the conditions contained in the agreement set forth immediately above, the Hospital Administrator was concerned about the imposition of the "ninety-day" sentence by district court. Although there was a community service alternative, Mr. Beck did not want to start Mr. Sandford working again only to have him imprisoned for ninety days.

15. Because Petitioner's EMT license expired on December 31, 1991, the hospital paid for Mr. Sandford to attend a refresher course in January of 1992 so Petitioner could maintain his license. The license was not renewed and reissued to Petitioner until February 5, 1992.

16. Michael Sandford has not worked at any other job during the periods when he was not employed by the County Hospital and was unemployed through the date of the hearing. The hospital has never provided Mr. Sandford with a notice of a right to a veterans preference hearing pursuant to Minn. Stat. 197.46.

17. In December of 1991, Michael Sandford filed a Petition for Relief with the Minnesota Department of Veterans Affairs. Subsequently, on January 9, 1992, the Commissioner of Veterans Affairs issued a Notice of Petition and Order for Hearing which initiated this proceeding. This notice was served on Michael Sandford and the Clearwater County Memorial Hospital Administrator, Randy Beck.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have jurisdiction over this matter pursuant to Minn. Stat. 14.50 and 197.481. The Notice of Hearing issued by the Minnesota Department of Veterans Affairs was proper in all respects and all substantive and procedural requirements of law and rule have been met.

2. The Petitioner, Michael E. Sandford, is an honorably-discharged veteran within the meaning of Minn. Stat. 197.447 and 197.46, and is entitled to all the protections of the Veterans Preference Act.

3. Clearwater County is a political subdivision of the state of Minnesota within the meaning of Minn. Stat. 197.46.

4. Minn. Stat. 197.46 prohibits the discharge or demotion of a veteran from public employment except for incompetency or misconduct shown after a hearing, upon due notice and upon stated charges in writing. *Leininger v. City of Blomington*, 299 N.W.2d 723, 726 (Minn. 1980). Michael Sandford's demotion from a full-time to a part-time employee on March 6, 1991, without notice of a right to a veterans preference hearing was in violation of Minn. Stat. 197.46.

5. Michael Sandford Is entitled to reinstatement to a full-time position as an EMT with the County Hospital and damages in the amount of his full-time salary or leave benefits minus amounts earned as a part-time employee. The Petitioner is not entitled to damages for periods of time when he was unable to work due to his failure to be licensed in early 1992. In addition, the Petitioner is entitled to pre-judgment interest in accord with Minn. Stat. 344.01, calculated from the time each paycheck was due. See Young-v.city Qf -Duluth, 410 N.W.2d 27 (Minn. App. 1987); Henry v. MWCC, 401 N.W.2d 401 (Minn. App. 1987). Damages shall continue to run until Mr. Sandford is reinstated to his full-time position or a hearing is held, after due notice, to demote or terminate Mr. Sandford from his position as a full-time EMT.

6. Petitioner is entitled to damages as follows: \$510.62 for March of 1991 (\$1,100.00 x 26/31 - \$411.98); \$638.40 for April of 1991 (\$1,100.00 - \$461.60); for May through September of 1991, any medical leave benefits Mr. Sandford would have been entitled to if he had been a full-time employee; \$550.00 for the first half of October, 1991; for the second half of October and first half of November, any medical leave benefits Mr. Sandford would have been entitled to if he had been a full-time employee; \$550.00 for the second half of November, 1991; \$1,100.00 minus the pay for two days worked in December of 1991; \$872.40 for February of 1991 (\$1,100.00 x 23/29); \$1,100.00 for March of 1992 and every month thereafter until Petitioner is reinstated or a hearing is held after statutory notice is provided. Pre-judgment interest must be paid from the time each payment was due.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs issue an order reinstating Michael Sandford to his position as a full-time EMT with the Clearwater County Memorial Hospital and awarding him compensatory damages consistent with the Conclusions set forth above.

Dated this 18 day of March, 1992.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, no transcript prepared.

MEMORANDUM

Pursuant to Minn. Stat. 197.46, a political subdivision may only discharge or demote a veteran for incompetency or misconduct. Leininger, Supra. However, prior to the action being taken, a veteran is entitled to written notice of his right to a hearing and the charges which constitute the basis for the action. In this case, the Petitioner was suspended for a period of thirty days but when he returned to his employment, he was demoted from a full-time position to a half-time position with no notice of his rights pursuant to Minn. Stat. 197.46. Because no statutory notice was given, the Petitioner is entitled to reinstatement to his position as a full-time EMT and compensatory damages in the form of lost wages with pre-judgment interest. Young, supra; Henry, supra.

The employer stated quite candidly that the correct procedures may not have been used in dealing with Mr. Sandford. However, the Administrator, Randy Beck, testified that he was trying to preserve a job for Mr. Sandford as best he could without having to make a decision to terminate the Petitioner's employment. He stated that the fact the hospital paid for Mr. Sandford's EMT license refresher course in January of 1992 shows good faith on the part of the hospital. Additionally, Mr. Beck did not want to commit to re-employing Mr. Sandford until it was clear that Petitioner would not be in jail for the next ninety days.

The Administrative Law Judge recognizes the efforts made by Mr. Beck in light of the difficult circumstances presented by this case. However, when the discharge or demotion of a veteran is contemplated by a public employer, the Veterans Preference Act must be complied with regardless of unusual circumstances. In this case, if the hospital felt demotion of the Petitioner was warranted after the thirty-day suspension, adequate notice and a right to a hearing was required pursuant to Minn. Stat. 197.46. Absent that notice, any demotion is invalid and a violation of the Veterans Preference Act. Damages for lost wages must be awarded as specified above.

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